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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

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9 REGIONAL TRANSPORTATION  
10 COMMISSION OF WASHOE COUNTY,

Case No. 3:14-cv-00674-MMD-WGC

11 Plaintiff,

ORDER

12 v.

13 TEAMSTERS LOCAL 533, and DOES I-  
X, inclusive,

14 Defendant.

15 **I. SUMMARY**

16 Plaintiff Regional Transportation Commission of Washoe County ("RTC" or  
17 "Plaintiff") seeks declaratory relief regarding its plan to activate the audio portion of a  
18 recording system already installed on its buses, which are operated by members of  
19 Defendant Teamsters Local 533 ("the Union" or "Defendant"). Before the Court is RTC's  
20 Motion for Summary Judgment ("Plaintiff's Motion") (ECF No. 26) and the Union's Motion  
21 for Summary Judgment ("Defendant's Motion") (ECF No. 28).<sup>1</sup> The Court has reviewed  
22 RTC's response and reply (ECF Nos. 31, 33) and the Union's response and reply (ECF  
23 Nos. 32, 34) as well as all accompanying exhibits.

24 For the reasons discussed below, Plaintiff's Motion is granted and Defendant's  
25 Motion is denied.

26 <sup>1</sup>The Court addresses both motions in the Discussion section because Plaintiff and  
27 Defendant raise the same arguments, with the exception that Defendant raises an  
28 additional argument regarding the National Labor Relations Act, see discussion *infra*  
Sect. IV(D).

1       **II.       BACKGROUND**

2               RTC initiated this action on December 1, 2014, in the Second Judicial District Court  
3 for Washoe County. (ECF No. 26 at 1; ECF No. 28 at 6.) The case was removed on  
4 December 22, 2014. (ECF No. 1.) In their Complaint, RTC asks that this Court enter a  
5 declaratory judgment finding that activation of the audio component of Mobile View does  
6 not violate NRS § 200.640 or § 200.650 or the Union Contract. (ECF No. 1-2 at 5-6.) The  
7 facts in this case are not at issue.

8               RTC has the exclusive right to operate a system of public transportation in Washoe  
9 County. (ECF No. 1-2 at 2; ECF No. 26 at 2.) RTC contracted with MV Transportation,  
10 Inc. (“MV”) to operate RTC’s assets, including public buses. (ECF No. 1-2 at 2; ECF No.  
11 26 at 2; ECF No. 28 at 9.) The Union represents the drivers of RTC buses. (ECF No. 26  
12 at 2; ECF No. 28 at 6.) MV and the Union entered into a collective bargaining agreement  
13 (“CBA” or “Agreement”), which governs drivers and other employees who operate RTC’s  
14 buses. (ECF No. 26 at 2; ECF No. 28 at 9.) Each RTC bus is equipped with two audio-  
15 video recording systems: DriveCam<sup>2</sup> and Mobile View. (ECF No. 26 at 2; ECF No. 28 at  
16 10.) At the front of each bus is a notice posted in both English and Spanish informing  
17 individuals that “this vehicle may be equipped with audio and video surveillance.” (ECF  
18 No. 26 at 2.)

19               At issue here is activation and use of the audio component of Mobile View. Mobile  
20 View is a system of 6 to 12 cameras placed on each RTC bus. (ECF No. 26 at 3.) It  
21 continuously records video, which is stored for up to 7 days after which the video is  
22 recorded over. (ECF No. 26 at 3.) A recording can be retrieved at any time prior to being  
23 recorded over. (ECF No. 26 at 3.) The Mobile View system also has a camera that has a  
24 microphone, which is placed at the front of the bus near the fare box. (ECF No. 26 at 3.)

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25               <sup>2</sup>DriveCam is a bidirectional camera mounted to the windshield of the bus, directed  
26 into the interior and exterior of the bus, and includes a microphone that is capable of  
27 picking up conversations near the driver. (ECF No. 26 at 2.) DriveCam can save the 10  
28 seconds prior to an activating event and the 10 seconds after an activating event. (ECF  
No. 26 at 2.) DriveCam records both audio and video, and it records events at the front  
of the bus as well as events outside of the bus. (ECF No. 26 at 2-3.)

1 This microphone is capable of recording audio of conversations around the driver as well  
2 as noises that can be heard by the bus driver. (ECF No. 26 at 3.) The microphone is  
3 currently not enabled on RTC buses.

4 On March 21, 2014, MV provided notice to its bus drivers that the audio component  
5 of Mobile View would be activated. (ECF No. 26 at 4.) The notice stated that activation of  
6 the microphone of Mobile View would be effective as of April 21, 2014. (ECF No. 26 at  
7 4.) On April 1, the President of the Union, Gary Watson, notified MV that the Union  
8 objected to activation of the microphone and audio recording. (ECF No. 26 at 4; ECF No.  
9 28 at 11.) As a result of the Union's objection and threat of criminal penalties, RTC  
10 decided to defer implementation of the audio recording and to seek declaratory judgment  
11 in this action. (ECF No. 26 at 4.)

### 12 **III. LEGAL STANDARD**

13 "The purpose of summary judgment is to avoid unnecessary trials when there is  
14 no dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*,  
15 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the  
16 pleadings, the discovery and disclosure materials on file, and any affidavits show "there  
17 is no genuine issue as to any material fact and that the moving party is entitled to  
18 judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). An issue  
19 is "genuine" if there is a sufficient evidentiary basis on which a reasonable fact-finder  
20 could find for the nonmoving party and a dispute is "material" if it could affect the outcome  
21 of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-  
22 49 (1986). Where reasonable minds could differ on the material facts at issue, however,  
23 summary judgment is not appropriate. See *id.* at 250-51. "The amount of evidence  
24 necessary to raise a genuine issue of material fact is enough 'to require a jury or judge to  
25 resolve the parties' differing versions of the truth at trial.'" *Aydin Corp. v. Loral Corp.*, 718  
26 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat'l Bank v. Cities Service Co.*, 391 U.S. 253,  
27 288-89 (1968)). In evaluating a summary judgment motion, a court views all facts and

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1 draws all inferences in the light most favorable to the nonmoving party. *Kaiser Cement*  
2 *Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

3 The moving party bears the burden of showing that there are no genuine issues of  
4 material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). “In order  
5 to carry its burden of production, the moving party must either produce evidence negating  
6 an essential element of the nonmoving party’s claim or defense or show that the  
7 nonmoving party does not have enough evidence of an essential element to carry its  
8 ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co., Ltd v. Fritz Cos.,*  
9 *Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000). Once the moving party satisfies Rule 56’s  
10 requirements, the burden shifts to the party resisting the motion to “set forth specific facts  
11 showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 256. The nonmoving  
12 party “may not rely on denials in the pleadings but must produce specific evidence,  
13 through affidavits or admissible discovery material, to show that the dispute exists,” *Bhan*  
14 *v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and “must do more than simply  
15 show that there is some metaphysical doubt as to the material facts.” *Orr v. Bank of Am.,*  
16 *NT & SA*, 285 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted). “The mere  
17 existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient.”  
18 *Anderson*, 477 U.S. at 252.

19 Further, “when parties submit cross-motions for summary judgment, ‘[e]ach motion  
20 must be considered on its own merits.’” *Fair Hous. Council of Riverside Cty., Inc. v.*  
21 *Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001) (quoting William W. Schwarzer, et  
22 al., *The Analysis and Decision of Summary Judgment Motions*, 139 F.R.D. 441, 499 (Feb.  
23 1992) (additional citations omitted)). “In fulfilling its duty to review each cross-motion  
24 separately, the court must review the evidence submitted in support of each cross-  
25 motion.” *Id.*

#### 26 **IV. DISCUSSION**

27 Plaintiff’s Motion argues that activating the audio component of the recording  
28 system does not violate NRS §§ 200.640 or 200.650 and that it is not a mandatory subject

1 of collective bargaining pursuant to the CBA. By contrast, Defendant's Motion argues the  
2 exact opposite on each point raised by Plaintiff and raises the additional argument that  
3 activating the audio component is a mandatory subject of bargaining under the National  
4 Labor Relations Act ("NLRA"). The Court agrees with Plaintiff that neither NRS provision  
5 applies in this context and that activating the audio component is not a mandatory subject  
6 under the CBA or the NLRA.

7 **A. NRS § 200.640**

8 Plaintiff argues that recording audio on RTC buses does not violate NRS § 200.640  
9 because the statute is narrowed in scope and the plain language of the statute shows  
10 that it does not apply in this context. (ECF No. 26 at 7-8; ECF No. 33 at 2.) The Court  
11 agrees.

12 NRS § 200.640 states:

13 Except as otherwise provided in NRS 179.410 to 179.515, inclusive, and  
14 200.620, a person shall not make any connection, either physically or by  
15 induction, with the wire or radio communication facilities of any person  
engaged in the business of providing service and facilities for  
communication unless the connection is authorized by the person providing  
the service and facilities.

16 The plain language of the statute prohibits individuals from making a connection  
17 with—essentially tapping into—the wire or radio communication facilities of a  
18 communications business without the consent of the business. See *State v. Allen*, 69  
19 P.3d 232, 235 (Nev. 2003) ("When a statute is plain and unambiguous, [the] court will  
20 give that language its ordinary meaning and not go beyond it."). By contrast, the recording  
21 device here appears to be an internal recording device used by RTC that does not make  
22 a connection with the wire or radio communication<sup>3</sup> facilities of a business that provides  
23 services and facilities for communication.

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25 <sup>3</sup>A "wire communication" is defined under Nevada law as the "transmission of  
26 writing, signs, signals, pictures and sounds of all kinds by wire, cable, or other similar  
27 connection between the points of origin and reception of such transmission, including all  
28 facilities and services incidental to such transmission, which facilities and services  
include, among other things, the receipt, forwarding and delivering of communications."  
NRS § 200.610(2).

1 In Defendant's Motion,<sup>4</sup> they point out that NRS § 200.640 appears under the  
2 subchapter heading "Interception and Disclosure of Wire and Radio Communications or  
3 Private Conversations" (ECF No. 28 at 13). Defendant's Motion also highlights that the  
4 memorandum of notice provided to employees evidences an intent to listen to  
5 conversations involving bus customers, that customers do not consent to having their  
6 conversations recorded, that the signs on the buses indicating that customers'  
7 conversations may be recorded is insufficient to garner customers' consent, and that bus  
8 drivers' did not consent to having their conversations recorded. (*Id.* at 13-16.) However,  
9 these facts are irrelevant to interpreting whether the activation of the audio portion of the  
10 device violates NRS § 200.640

11 Therefore, the Court finds that activating the audio portion of the recording device  
12 does not violate NRS § 200.640.

13 **B. NRS § 200.650**

14 Plaintiff argues that recording audio on RTC buses does not violate NRS § 200.650  
15 because the statute prevents surreptitious or clandestine recording of conversations and  
16 there is no reasonable expectation of privacy while on RTC buses given that there are  
17 notices at the front of the bus in English and Spanish stating that the vehicle "may be  
18 equipped with audio and video surveillance." (ECF No. 26 at 8-10; ECF No. 31 at 4-8.)  
19 Defendant contends that activating the audio portion of Mobile View violates NRS §  
20 200.650 because individuals do, in fact, have a reasonable expectation of privacy on RTC  
21 buses, which is evidenced by the fact that passengers may not speak the languages that  
22 the notices are provided in, that the notices do not clearly inform people their  
23 conversations are actually being recorded, and that some people whisper to one another  
24 on a bus. (ECF No. 28 at 16; ECF No. 32 at 6.) The Court agrees with Plaintiff.

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27 <sup>4</sup>Defendant makes no reference to NRS § 200.640 in their response to Plaintiff's  
28 Motion and instead focuses its response on interpreting NRS § 200.650. (ECF No. 32 at 3-9.)

1 NRS § 200.650 states that:

2 [A] person shall not intrude upon the privacy of other persons by  
3 surreptitiously listening to, monitoring or recording, or attempting to listen  
4 to, monitor or record, by means of any mechanical, electronic or other  
5 listening device, any private conversation engaged in by the other persons,  
or disclose the existence, content, substance, purport, effect or meaning of  
any conversation so listened to, monitored or recorded, unless authorized  
to do so by one of the persons engaging in the conversation.

6 Based on the plain language of the statute, however, activating the audio portion of the  
7 Mobile View on RTC buses does not violate § 200.650 as the recording would not be  
8 surreptitious or violate the expectations of privacy of those on the bus.

9 In its Motion, Plaintiff points to a Nevada Attorney General opinion, in which the  
10 Office of the Attorney General held that monitoring the private conversations of prisoners  
11 was not surreptitious as inmates did not have a reasonable expectation of privacy “where  
12 notice of monitoring is clearly posted, or the monitoring equipment is in plain view.” (ECF  
13 No. 26 at (citing to AGO 86-17, at \*47 (Sept. 24, 1986))). Similar to the monitoring of  
14 prisoners, the notices on RTC buses, which are at the front of the bus and in plain view,  
15 demonstrate that the use of the audio portion of Mobile View is not surreptitious.<sup>5</sup> See,  
16 e.g., *Surreptitious*, BLACK’S LAW DICTIONARY (10th ed. 2014) (“unauthorized and  
17 clandestine,” “done by stealth and without legitimate authority”). Moreover, there is no  
18 reasonable expectation of privacy regarding conversations knowingly made in public.  
19 *Johnson v. Hawe*, 388 F.3d 676, 683 (9th Cir. 2004). Contrary to Defendant’s contention,  
20 this lack of privacy is evidenced by individuals whispering on RTC buses in order to  
21 conceal the content of their conversations; whispering would not be required in a private  
22 space, like one’s home, where there are reasonable expectations of privacy. Moreover,  
23 Defendant’s argument that RTC is attempting to force bus drivers to consent to having  
24 their conversations recorded is irrelevant to whether activating the audio portion of Mobile  
25 View violates § 200.650, as conversations on RTC buses are not private.

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26 <sup>5</sup>It is irrelevant that some individuals may not be able to read English or Spanish  
27 or that they may be illiterate. (See ECF No. 32 at 5,6.) Placing the notices at the front of  
28 the bus demonstrates that RTC does not intend the recording to be made surreptitiously  
or clandestinely.

1           Thus, as a matter of law, activating the audio portion of Mobile View does not  
2 violate NRS § 200.650.

3           **C.     Collective Bargaining Agreement<sup>6</sup>**

4           The CBA is an agreement between MV and the Union. (ECF No. 26 at 2; ECF No.  
5 28 at 8; ECF No. 26-3 at 6.) Plaintiff contends that the use of recording devices and  
6 recorded data for discipline was settled in the CBA, and that the Agreement allows  
7 Defendant to view the recording prior to institution of any disciplinary action by MV. (ECF  
8 No. 26 at 11-12.) The Court agrees.

9           The CBA specifically states that MV “may employ new technology, including video  
10 systems . . . in order to help ensure the safety of the driver and passengers, and  
11 compliance with all federal, state and local driving rules and regulations by both the driver  
12 and the motoring or pedestrian public.” (ECF No. 26-3 at 9.) While it is not clear that  
13 activating the audio component of Mobile View constitutes a “new technology” under the  
14 CBA, it is clear that Mobile View’s video component was already in use and the audio  
15 component of the DriveCam system has already been in use without any noted problems  
16 from the Union. Thus, the Union was already on notice that these systems were in use  
17 and of the possibility that certain recordings could be saved and then used in disciplinary  
18 actions against bus drivers.<sup>7</sup> In addition, activating the audio component of Mobile View  
19 does not entail that all conversations of drivers or customers are recorded and saved for  
20 future use in disciplinary actions; rather, if the audio is not saved then it is recorded over

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23           <sup>6</sup>As a preliminary matter, the CBA between MV and Teamsters expired on June  
24 30, 2017. (See ECF No. 26 at 2; see *also* ECF No. 26-3 at 6.) Because the Court is  
uncertain if it was renewed, the Court will still address arguments relating to the  
Agreement.

25           <sup>7</sup>The CBA provides that MV may “reprimand, suspend, discharge, or otherwise  
26 discipline employees for just cause,” as well as to “set the standards of productivity, the  
27 services to be rendered, to maintain the efficiency of operations,” and the right to  
28 “introduce new or improved technology, machines, tools, equipment, property, research,  
service, maintenance methods, and materials used to increase efficiency.” (ECF No. 26-  
3 at 8-9.)



1 and cannot be used for purposes of safety or discipline.<sup>8</sup> (ECF No. 26-4 at 8 (“tapes are  
2 recorded over after a 72 hour [sic] period unless there is an incident which requires that  
3 it be saved”).)<sup>9</sup> If a conversation is recorded, then the CBA provides that the Union be  
4 given an opportunity to review and in certain circumstances receive a copy of the  
5 recording if a disciplinary action is instituted against a driver. (ECF No. 26-3 at 9.)

6 Therefore, the Court agrees with Plaintiff that activating a component of an already  
7 existing recording system does not violate the CBA.

#### 8 **D. National Labor Relations Act**

9 In the alternative, Defendant argues that activating the audio component of Mobile  
10 View is a mandatory subject of bargaining under the NLRA because it relates to the safety  
11 and discipline of employees. (ECF No. 28 at 20-22.) Specifically, Defendant argues that  
12 this action is an attempt by Plaintiff to interfere with the rights of the Union and its  
13 members in violation of Section 7 of the NLRA. In response, Plaintiff states that “1) the  
14 issue of permissible recording have already been collectively bargained, and 2)  
15 Defendant’s position that the proposed activation of the audio recording on Mobile View  
16 is a disciplinary action is a red herring.” (ECF No. 31 at 10.) The Court agrees with Plaintiff  
17 that activation of the audio component does not violate the CBA, as discussed *supra*  
18 Section IV(C), and that activation does not necessarily implicate use in employee  
19 disciplinary actions because an audio recording from the Mobile View system would have  
20 to be saved and not recorded over in order to be used in such actions. (See ECF No. 31  
21 at 11-12.) Moreover, even if a recording from the Mobile View system is saved, the CBA

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24 <sup>8</sup>It is unclear to the Court whether RTC or MV are actually monitoring these  
25 recordings in real time or whether the recordings have to be saved before they can be  
observed. (See, e.g., ECF No. 31 at 2 (“videos can be retrieved at any time prior to being  
recorded over”).)

26 <sup>9</sup>Based on RTC’s Board meeting minutes from February 21, 2014, an audio  
27 recording would need to be tagged and thus saved for future use in disciplinary  
28 proceedings, which occurs only if a complaint is made within the 72-hour period before  
the audio is recorded over. (See ECF No. 26-4 at 8-9; ECF No. 28 at 60-61.)

1 clearly provides an existing mechanism by which the recording may be used in any  
2 disciplinary actions.<sup>10</sup>

3 **V. CONCLUSION**

4 The Court notes that the parties made several arguments and cited to several  
5 cases not discussed above. The Court has reviewed these arguments and cases and  
6 determines that they do not warrant discussion or reconsideration as they do not affect  
7 the outcome of the pending motions.

8 It is therefore ordered that Plaintiff's Motion for Summary Judgment (ECF No. 26)  
9 is granted and Defendant's Motion for Summary Judgment (ECF No. 28) is denied.

10 The Clerk is directed to enter judgment in favor of Plaintiff and close this case.

11  
12 DATED THIS 18<sup>th</sup> day of September 2017.

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15 MIRANDA M. DU  
16 UNITED STATES DISTRICT JUDGE  
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26 <sup>10</sup>While safety rules and rules of employee conduct are mandatory subjects of  
27 bargaining, activation of the audio component and use of audio recordings in disciplinary  
28 actions are still subject to the existing safety rules and rules of employee conduct of the  
CBA. (See ECF No. 28 at 21.)